

UNITED STATES DISTRICT COURT

Southern District of Ohio

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

(For Offenses Committed On or After November 1, 1987)

THE OHIO VALLEY COAL COMPANY

Case Number 2:12-cr-137 (1)

Defendant's Attorney

THE DEFENDANT:

 x pleaded guilty to count one (1) and count two (2) of the Information.
 pleaded nolo contendere to counts _____ of the _____.
 was found guilty on counts _____ of the _____ after a plea of not guilty.

Title & Section
33:1311 & 33:1319
33:1311 & 33:1319

Nature of Offense
failure to monitor and sample
bypassing treatment works

Date Offense
Concluded
02/28/2008
10/01/2010

Count
Number
One
Two

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

 The defendant has been found not guilty on counts _____ of the Indictment, and is discharged as to such counts.

 Count _____ of the Indictment is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

August 1, 2012
Date of Imposition of Sentence

/s/ Terence P. Kemp
Signature of Judicial Officer

Terence P. Kemp
U.S. Magistrate Judge

August 1, 2012
Date

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PROBATION

The defendant is hereby placed on probation for a term of TWELVE (12) MONTHS.

1) Defendant to install a HDPE pipeline system with double-walled features, between American Energy Corporation ("AEC") and The Ohio Valley Coal Company ("OVCC"), designed to improve pipeline integrity and maintain and operate such pipeline. Defendant will implement and install such equipment and training as necessary to force a shutdown of the flow of slurry in the pipeline from AEC to OVCC in the event of a pipeline failure.

2) Defendant shall comply with the Clean Water Act, Title 33 U.S.C. §§1311,1312,1318, and any terms and conditions of any National Pollutant Discharge Elimination System permit issued under or in compliance with Title 33 U.S.C. §1342 and Ohio Revised Code Chapter 6111, and shall develop a compliance program to effectively prevent, detect and timely report any such violations to include developing a Slurry Release Prevention and Emergency Responses Plan ("Plan") for both OVCC and AEC to protect public health and the environment and submitting the Plan to the Ohio Environmental Protection Agency for approval during the first six (6) months of the term of probation.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within fifteen (15) days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

— The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

— The defendant shall not possess a firearm as defined in 18 U.S.C. §921.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthful all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record of personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

<u>Count</u>	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
One	\$125.00	\$300,000.00	\$87,000.00
Two	\$125.00	\$200,000.00	

___ If applicable, restitution amount ordered pursuant to plea agreement.....\$_____

<u>Totals:</u>	\$250.00	\$500,000.00	\$87,000.00
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FINE

The above fine includes costs of incarceration and/or supervision in the amount of \$_____

The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

___ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

___ The interest requirement is waived.

___ The interest requirement is modified as follows:

RESTITUTION

___ The determination of restitution is deferred in cases brought under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____.*. An Amended Judgment in a Criminal Case will be entered after such determination.

___ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

<u>Name of Payee</u>	<u>Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
Division of Surface Water State of Ohio EPA		\$87,000.00	100%
<u>Totals</u>	\$	<u>\$87,000.00</u>	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994.

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SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☐ in full immediately; or

B ☐ \$ _____ immediately, balance due (in accordance with C, D, or E); or

C ☐ not later than _____; or

D ☐ Through participation in the Bureau of Prisons Inmate Financial Responsibility Program. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E ☐ in _____ (e.g. equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ years to commence _____ days after the date of this judgment.

Special instruction regarding the payment of criminal monetary penalties:

The Special Assessment of \$250.00 and the restitution payment of \$87,000.00 are due immediately. The \$500,000.00 fine is to be paid within ninety (90) days of sentencing

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court, Office of the Clerk, 85 Marconi Boulevard, Room 260, Columbus Ohio 43215 except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

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STATEMENT OF REASONS

 x A pre-sentence report was not completed.

OR

 The court adopts the factual findings and advisory guideline application in the pre-sentence report except the Court departs from the advisory guideline range, and upon consideration of the factors enumerated in 18 U.S.C. §3553(a), and as analyzed by this Court on the record, this Court finds that a sentence of Sixty (60) months is sufficient, but not greater than necessary to comply with the purposes of sentencing.

Advisory Guideline Range Determined by the Court:

Total Offense Level:

Criminal History Category:

Probation Range: 0 to 60 months

Supervised Release Range: to years

Fine Range: \$ 97,500.00 to \$ 1,175,000.00

 Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$ 87,000.00

 Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. §3663(d).

 For offenses that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstance of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

 Partial restitution is ordered for the following reasons:

The Court finds that the sentence imposed herein reflects the seriousness of the offense(s), promotes respect for the law, provides just punishment, affords adequate deterrence, protects the public, and, where necessary, effectively provides the defendant with needed educational or vocational training and medical care. The Court further finds that the sentence imposed herein does not create unwarranted sentencing disparity given the particular facts of this case and the Court has considered the need to provide restitution to the victims 18 U.S.C. § 3553.

After consideration of all factors set forth in 18 U.S.C. 3553(a)(1) thru (7), and treating the United States Sentencing Guidelines as advisory only, the Court has determined, for reasons set forth on the record in open Court, that the sentence is sufficient, but not greater than necessary, to comply with the purposes of sentencing set forth in that statutory section.

 The sentence departs from the advisory guideline range

 upon motion of the government, as a result of defendant's substantial assistance, the Court departs to a level .

 for the following reasons: